

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 14

ST. CLAIR DIE CASTING, L.L.C.

Employer

and

Case 14-RC-12456

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, UAW

Petitioner

**REGIONAL DIRECTOR'S
DECISION AND DIRECTION OF ELECTION**

The Employer, St. Clair Die Casting, L.L.C., manufactures aluminum and zinc die castings. The Petitioner, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, filed a petition with the National Labor Relations Board under Section 9(c) of the Act. The Petitioner seeks to represent a unit of all full-time and regular part-time production and maintenance employees, including material handling, quality, and tool room employees, team leaders, and setup specialists employed at the Employer's St. Clair, Missouri facility. A hearing officer of the Board held a hearing, and the Employer filed a brief with me, which I have carefully considered.

The supervisory status of four setup specialists is the only issue to be decided. The Petitioner seeks to include these individuals as part of the production and maintenance unit and argues they are employees under the Act. The Employer argues these four individuals are supervisors under Section 2(11) of the Act and, therefore, should be excluded from the unit. I have considered the evidence and the arguments presented by the parties on this issue, and I

find the four setup specialists are not supervisors within the meaning of Section 2(11) of the Act. Accordingly, I shall include the four setup specialists in the unit.

I. Overview of Operations

The Employer's St. Clair, Missouri facility is divided into six departments: aluminum and zinc die casting, machine and finishing, tool room, quality, maintenance, and shipping and receiving. In the die casting department, raw material is melted and placed in dies to form parts. The parts are then either sold directly to the customer or sent to the machine and finishing department for additional processing. The four setup specialists at issue here work in the machine and finishing department. The tool room employees repair and maintain the tools, dies, and fixtures that are used to make the product. Quality employees check the actual product against the customer's order to ensure the product meets the customer's specifications. Maintenance employees repair and maintain the production machinery.

The machine and finishing department is under the supervision of William Phillips, referred to as the department's "coach". The department operates 24 hours per day with three shifts. Twelve employees work on the first shift, and four to six employees generally work on the second shift. The record does not reflect the number of employees on the third shift. Up until the week of the hearing, the Employer had a setup specialist on each of the three shifts. The record does not reflect what shift the fourth setup specialist worked on. The week of the hearing, the second shift setup specialist was moved to the first shift and the record does not reflect whether there are currently any setup specialists working on the second shift. The other employees in the machine and finishing department are classified as operators and advanced operators. The first shift also has one individual classified as a team leader. This team leader is included in the unit as are the team leaders in the other departments.

Setup specialists "set up" and program machines for particular jobs. They also ensure the operators have all the necessary materials to perform the job, and move material to and

from the machines. Setup specialists perform operator duties as needed, and fill in for absent operators.

All the setup specialists report directly to the department's supervisor, William Phillips. Phillips is generally present at the facility during the day, until about 5 or 6 p.m. Phillips sets out the daily schedule for the department and prioritizes the work that has to be completed for the day. Phillips also leaves written instructions detailing which operator should be assigned to which machine. If an operator finishes early with one job, the operator then starts on the next job on the priority list. In the event Phillips does not leave instructions for which jobs to run when an operator completes the current job, the setup specialist contacts Phillips and asks for assignments for the operator. When an operator completes a job and is ready to move to the next one, but is not experienced on the machinery needed to perform the next job, the setup specialist can move an experienced operator to work on the machine with the inexperienced operator. The evidence is conflicting on how the setup specialists choose an experienced employee to do training. One setup specialist testified Phillips instructed the setup specialists on which experienced employees to use. Phillips, in contrast, stated the setup specialists made this determination on their own, though Phillips did not explain what the setup specialists' determination is based on, such as availability, seniority, or some other criteria. This cross training of operators is a common practice in the machine and finishing department and all such training is performed with Phillips' express approval.

Setup specialists, like other production and maintenance employees, are hourly employees and punch a time clock. They work the same hours as the other employees on their shift, and have the same number of breaks and the same 15-minute lunch period. Setup specialists do not have separate break rooms or locker areas, nor do they wear distinctive clothing, badges, or other insignia marking them separate from other employees. Setup specialists, like other production and maintenance employees, are paid weekly. Coach Phillips, by contrast, is salaried, does not punch a time clock, and is paid every 2 weeks. Setup

specialists also have the same benefits as the production and maintenance employees, and are subject to the same disciplinary procedures. The setup specialists, previously classified as programmers, did vote in a previous election in 1999 involving a different union, along with other production and maintenance employees.

II. Status of Setup Specialist

The test for determining supervisory status is whether the individual is acting in the interest of the Employer, has the authority to engage in any one of the 12 criteria enumerated in Section 2(11) of the Act, and uses independent judgment in the exercise of such authority. *N.L.R.B. v. Health Care & Retirement Corp.*, 511 U.S. 571, 573-574 (1994). The burden of proving that an employee is a statutory supervisor is on the party alleging such status. *Kentucky River Community Care, Inc.*, 532 U.S. 706 (2001). In light of the exclusion of supervisors from the protection of the Act, this burden is a heavy one. *Franklin Hospital Medical Center d/b/a Franklin Home Health Agency*, 337 NLRB No. 132, slip op. at 4 (2002). Lack of evidence is construed against the party asserting supervisory status. *Michigan Masonic Home*, 332 NLRB 1409 (2000). “Whenever the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, [the Board] will find that supervisory status has not been established, at least on the basis of those indicia.” *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989). Mere inferences or conclusionary statements, without detailed, specific evidence of independent judgment are insufficient to establish supervisory authority. *Sears, Roebuck & Co.*, 304 NLRB 193 (1991).

As the Employer asserts the four setup specialists are supervisors, the Employer is charged with proving their supervisory status. The Employer has not met its burden. The Employer provides no evidence and does not contend that setup specialists hire, fire, suspend, transfer, layoff, recall, promote, reward, or adjust grievances, or effectively recommend such actions. As a result, this analysis concentrates on assignments, responsible direction, disciplinary action, evaluations, and secondary indicia.

A. Assignments

The Employer contends the four setup specialists have the authority to assign work. Coach William Phillips, however, provides the setup specialists with a priority list setting forth the jobs that need to be run each day. This list assigns particular employees to work on particular machines. If an operator does finish a job early, or if the operator's machine is down due to repairs, the setup specialist can instruct the operator to start on the next job on the priority list. If no other work can be performed, Phillips has instructed at least one setup specialist not to permit employees to stand idle and to assign them to sweep the floors. One setup specialist testified that if Phillips did not leave written instructions for what jobs an operator should work on if he finishes early or his machine is down, the setup specialist would contact Phillips by telephone and Phillips would make the assignment. Phillips testified that information obtained from the first shift setup specialist regarding employees' skills on particular machines was "valuable" in making these assignments. Phillips presented no specific instances of assignments made solely based on information provided by a setup specialist, nor does the record reflect exactly what impact, if any, the setup specialists' comments had on the assignments. The Board requires specific evidence that a supervisor exercises independent judgment in assigning work. *Sears, Roebuck & Co.*, supra. Where as here, the assignment of tasks is in accordance with Phillips' express instructions and set parameters, the Employer has failed to establish that the setup specialists exercise independent judgment in the assignment of work. See *Franklin Home Health Agency*, supra; *Express Messenger Systems*, 301 NLRB 651, 654 (1991). Setup specialists have no authority to assign break times, lunch periods, to approve time off or vacations, or to approve overtime, nor do they have the authority to assign employees to other departments or to other shifts.

B. Responsible Direction

The Employer contends that the setup specialists responsibly direct the work of the operators by correcting and instructing operators on the proper way to perform their duties and by directing experienced operators to work with inexperienced operators. While setup specialists can instruct an employee on the proper way to operate a machine if they observe the operator using a machine incorrectly, pointing out mistakes to employees and demonstrating the correct procedure does not confer supervisory status on an individual. *Franklin Home Health Agency*, supra; *Crittendon Hosp.*, 328 NLRB 879 (1999).

As previously noted, the evidence on how experienced operators are paired with inexperienced operators is conflicting. The setup specialists testified Phillips chose which experienced operators would cross train inexperienced operators, while Phillips testified the setup specialists made this determination, though Phillips admitted he usually had “input” into the decision. Regardless of who made the determination, cross training is a common practice carried out under established Employer policies and with Phillip’s express approval. Thus, in following the Employer’s practice of pairing experienced employees with inexperienced employees, the setup specialists were not exercising independent judgment but were merely following the Employer’s usual routine practice. See *Franklin Home Health Agency*, supra. Moreover, the Employer has failed to show that the setup specialists’ direction is “responsible direction,” which depends on whether the alleged supervisor is held fully accountable and responsible for the performance and work product of the employees he directs. *Franklin Home Health Agency*, supra.

C. Disciplinary Actions

The Employer contends setup specialists are supervisors because they have the authority to issue disciplinary warnings to employees. The Employer presented eight “secondary disciplinary warning” forms signed by only one of the four setup specialists. These

forms are unique to the machine and finishing department, and are not considered part of the Employer's formal progressive disciplinary system. Coach Phillips created these forms at a time when the position of leadmen, or team leader, still existed on all three shifts, and the form contains a space for the leadman to sign and for the coach, or supervisor, to sign. The Employer still has a team leader on the first shift, who is included in the unit. The team leader has filled out these forms. There is no specific evidence that any setup specialist, other than the one formerly on the second shift, ever signed these forms. The third shift setup specialist has never filled out this form and the first shift setup specialist has not only never filled out this form, but also has never been made aware of the existence of such form or his authority to use it. The record does not reflect whether the former second shift setup specialist will continue to sign secondary disciplinary warnings after being moved to first shift, particularly when the other first shift setup specialist does not.

The evidence is conflicting on how the secondary disciplinary warnings are initiated. On the first shift, Phillips initiates the secondary warning forms and sits in on all meetings when the secondary disciplinary warnings are presented to the employees. The first shift setup specialist does not sign the secondary disciplinary warnings and, as noted, has never been told he has the authority to do so. The record does not reflect whether the first shift team leader, who is included in the unit, signs the secondary warning forms along with Phillips. On the second shift, the setup specialist testified Phillips initiated the secondary warnings and instructed the setup specialist to sign them as a witness to the conduct set forth in the warning. Phillips testified the second shift setup specialist usually initiated the forms on his own, signed them, and then left the forms for Phillips to sign the following morning, though Phillips admitted he did initiate some of the secondary warning forms and simply instructed the setup specialist to sign them.

The secondary disciplinary warnings are only used for specific rule infractions which are set forth on the form itself, including exceeding the allotted break time, not meeting production quotas, making bad parts, and mislocating or failing to clamp a part, also referred to as

“crashing” a machine. Of the eight secondary warnings presented, one was issued in 2001, two in 2002, and five in 2003. Five of these eight warnings are for mislocation/crashing a machine. One setup specialist testified without contradiction that Phillips instructed the setup specialists to report all “crashes” to management. No independent judgment is involved in reporting rule infractions to management per management’s instructions. Of the other three warnings, two were for producing bad parts, and Phillips admits that one of these two warnings was initiated by Phillips, who instructed the setup specialist to fill out and sign a secondary warning form. The remaining warning was given to an employee who took excessive break time, but the record does not reflect the specific circumstances under which this warning was issued.

Setup specialists do not make any personnel action recommendations on the secondary disciplinary warnings. These secondary disciplinary warnings are not part of the Employer’s formal progressive disciplinary system and are not given to the human resource office. These warnings are kept only by Phillips. The Employer presented only one instance where an individual who received secondary disciplinary warnings eventually received a formal written warning. Phillips stated that the information from the secondary disciplinary warnings was “used” in determining whether he would recommend issuing a formal written warning, but the formal warning which ultimately issued did not make reference to the prior secondary warnings. Further, Phillips testified that he has no power himself to issue formal discipline and can only recommend such actions. While a formal warning was issued to an employee who had received prior secondary warnings, the record fails to reflect what impact, if any, the secondary warnings had on the individual actually making the decision to discipline the employee, or what other information was taken into consideration when issuing the formal warning. While the secondary warning form states that formal disciplinary action could result if an employee engaged in the same conduct within a certain period of time, the record fails to reflect this is automatic. Phillips does not follow the written instructions on the form regarding potential future discipline but rather considers the number of warnings issued within 6 months to a year, not the

30 and 45-day time periods set forth on the form. Phillips reviews all secondary warnings and signed all but one of the eight warnings presented by the Employer. If the operator signs the warning without protest, Phillips assumes that the information contained therein is correct. However, if the operator protests, then Phillips will investigate further and may rescind the warning.

The record fails to establish that the secondary disciplinary warnings automatically lead to more severe discipline, or that they impact the employee's employment status in any way. The Employer presented no formal discipline which referenced secondary warnings received by the same employee. These secondary warnings are thus not an integral part of the progressive disciplinary system and the setup specialists' limited role is nothing more than reportorial and clearly not supervisory. *Ken-Crest Services*, 335 NLRB 777, 778 (2001). The ability to issue warnings is not equivalent to supervisory authority, particularly where, as here, the reports are reviewed and independently investigated by other supervisory personnel. *Vencor Hospital-Los Angeles*, 328 NLRB 1136, 1139 (1999). See also, *Quadrex Environmental Co.*, 308 NLRB 101, 102 (1992).

The setup specialists do not effectively recommend discipline. The record reflects only one instance where a setup specialist complained to a supervisor about a fellow employee refusing to work and using inappropriate language. The supervisor spoke to the setup specialist and the other employee involved, and the other employee was ultimately terminated. The supervisor, not the setup specialist, made the determination to terminate the employee, and only after the supervisor involved conducted an independent investigation. There is no evidence the setup specialist recommended termination of the employee, or that any such recommendation was effective. Further, authority to effectively recommend generally means that the recommended action is taken without independent investigation by supervisors, and not simply that the recommendation is ultimately followed. *Children's Farm Home*, 324 NLRB 61 (1997); *Ryder Truck Rental*, 326 NLRB 1386, 1387 fn. 9 (1998).

While the setup specialists are also responsible for keeping track of absences, no setup specialist has recommended discipline based on absences. Setup specialists merely fill out forms indicating who is present each day and present these forms to Coach Phillips. The team leader on the first shift, and not the setup specialist, is the one responsible for filling out these absence sheets on the first shift, and the team leader is included in the unit. Thus, the setup specialists are doing nothing more than making ministerial reports to management that are also made by other employees included in the unit. Passing reports to management, which do contain recommendations on any personnel actions, do not constitute disciplinary action or confer supervisory status. See *Quadrex Environmental Co.*, 308 NLRB 101, 102 (1992).

D. Evaluations

The Employer contends the setup specialists have the authority to evaluate employees. Employees in the machine and finishing department receive evaluations after 30, 60, and 90 days, and again after 6 months. The Employer did not provide copies of any of the evaluations. One setup specialist, formerly on the second shift, testified that he was asked his opinion of the employees on his shift, specifically on the quality and safety of their work. Coach Phillips then reviewed the evaluation made by the setup specialist and determined how much of the setup specialist's evaluation would be copied onto the final evaluation. Phillips also signs the evaluation along with the setup specialist. There is no evidence that setup specialists on the first or third shifts participate in evaluations, or how frequently the former second shift setup specialist participates in evaluations. There is also no evidence the setup specialists make any recommendations on the evaluation, or have any input into wages, awards, retention, or promotional decisions.

The ability to evaluate employees is not an enumerated function of Section 2(11) and thus must be related to wages or job status. *Harborside Healthcare, Inc.*, 330 NLRB 1334 (2000). The authority simply to evaluate employees, without more, is insufficient to find supervisory status. *Ten Broeck Commons*, 320 NLRB 806, 813 (1996). While the record

establishes one of the setup specialists has some involvement in evaluations, the record does not establish the crucial link between evaluations and an effect on employee job status. *Crittendon Hosp.*, 328 NLRB 879 (1999). Moreover, there is no evidence as to what weight is given the setup specialist's input when the final evaluation is prepared by Phillips.

E. Secondary Indicia

The Employer contends the setup specialist is the highest ranking individual on the second and third shifts and, therefore, they have supervisory authority. The fact that the second and third shift setup specialists are the highest ranking employees at the facility during their respective shifts is secondary indicia which, alone, cannot establish supervisory status. *Northcrest Nursing Home*, 313 NLRB 491, 500 (1993); *Billows Electric Supply of Northfield, Inc.*, 311 NLRB 878 fn. 2 (1993). This is particularly true where, as here, the individuals are instructed to contact their supervisors in the event of a problem. *Mid-State Fruit, Inc.*, 186 NLRB 51 (1970). The setup specialists on the second and third shifts have access to Phillips at home when Phillips is not present, and they have been instructed to contact Phillips with questions or problems. The former second shift setup specialist also testified, without contradiction, that supervisor Rod Starks, the coach or supervisor in the aluminum and zinc die casting departments, watches the second and third shifts in Phillips' absence, and questions or problems can be brought to Starks. Thus, other managers are available in Phillips' absence, and Phillips himself is available by telephone.

F. Conclusion

Setup specialists do not assign, responsibly direct, discipline, or evaluate employees with any degree of independent judgment. Therefore, I find the Employer has not met its burden of proof to demonstrate the setup specialists are statutory supervisors. Accordingly, setup specialists are appropriately included in the unit.

III. Findings and Conclusions

Based on the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production and maintenance employees, including material handling, quality, and tool room employees, team leaders, and setup specialists employed by the Employer at its St. Clair, Missouri facility, EXCLUDING temporary employees, office clerical and professional employees, guards and supervisors¹ as defined in the Act.

IV. Direction of Election

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees in this unit will vote on whether or not they wish to be represented for purposes of collective bargaining by: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW.

¹ The parties stipulated the following individuals are supervisors within the meaning of Section 2(11) of the Act and should be excluded from the unit: David Fleming, Leigh Eweld, Barbara Maune, Lyndsey Campbell, Don Cherry, Mike Klonts, Mike Hemphill, Kevin Hercules, Dixie Jost, Nancy McCulloch, Bill Phillips, Archie Pier, Mick Queen, Bill Reger, Richard Reilly, Dianna Sanders, Josh Schroeder, Rod Starks, Mark Steele, Bob Stolte, Steve Tauchert, Trey Gunn, Dwayne Howard, and Vivian "Butch" Stahlman.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately prior to the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are: (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

Also eligible to vote are those employees who have been employed for a total of 30 working days or more within the period of 12 months immediately preceding the eligibility date for the election, or who have some employment in that period and have been employed 45 working days or more within the 24 months immediately preceding the eligibility date for the election, and who have not been terminated for cause or quit voluntarily prior to the completion of the last job for which they were employed.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used in communication with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 7549 (1969).

Accordingly, it is hereby directed that an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director for Region 14 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the 14th Region, 1222 Spruce Street, Room 8.302, St. Louis, MO 63103 on or before **September 24, 2003**. No extension of time to file the list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (314) 539-7794. Since the list will be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer shall post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

V. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by **October 1, 2003**. The request may not be filed by facsimile.

Dated September 17, 2003
at Saint Louis, Missouri

Leo D. Dollard, Acting Regional Director
National Labor Relations Board, Region 14

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